1948, as it discloses no more than that they were "in the company of" an armed bandit. He conceded that they might have been convicted, if charged under regulation 5(1A) with being "found in the company of" an armed bandit, but contended that, in order to justify a conviction for "consorting", the prosecution was bound to prove something more than mere presence with an armed bandit, and that the difference in the wording of regulations 5(1A) and 6A(1) clearly shows that a difference was intended.

Mr. Jackson did not seriously contest the proposition that the prosecution's evidence brought the case within the scope of regulation 5(1A) rather than regulation 6A(1).

Where the only evidence for the prosecution is that an accused person has been found in the company of an armed bandit, as was the case here, a conviction for consorting under regulation 6A(1) is not justified. In order to justify a conviction for consorting under that regulation, the prosecution has to go further by establishing circumstances which entitle the Court to draw the conclusion that the association was something more than a casual meeting or conversation. On the other hand, in the absence of a satisfactory explanation by the accused, such evidence would, in our opinion, entitle the Court to convict under regulation 5(1A). It follows, therefore, that our answer to the second question is in the negative.

In all the circumstances, we consider that justice will be done in this case by our setting aside the conviction for consorting under regulation 6A(1), and substituting therefor a conviction under regulation 5(1A). We agree with Mr. Rintoul's submission that the sentence of five years rigorous imprisonment, for what may properly be regarded as a lesser offence, would be unduly severe. We accordingly reduce the sentence in each case to one of two years rigorous imprisonment, the sentences to run from the date of arrest.

Order accordingly.

PUBLIC PROSECUTOR v. TAY YAM PENG.

[Court of Appeal (Foster Sutton, C.J., Taylor and Abbott, JJ.) June 12, 1951]

[F.M. — Criminal Reference No. 4 of 1951]

Evidence Ordinance, s. 26 — Whether a Chandu Officer is a Police Officer.

In this case the question for the determination of the Court was whether a Chandu Officer, who is not a member of the Police Force of the Federation, is a Police Officer within the meaning of section 26 of the Evidence Ordinance, 1950.

Held, that the words "police officer" in section 26 of the Evidence Ordinance must be given their ordinary every-day meaning. Applying that test, a Chandu Officer is not a Police Officer within the meaning of that section.

Obiter — Tan Shu En & Anor. v. Public Prosecutor(1) is not a decision of a Court of co-ordinate jurisdiction with the Court of Appeal, and although the Court of Appeal would always give great weight to such a decision, it is not binding upon it.

Rex v. Man Woo(2) applied.

Cases referred to :—

(1) *Tan Shu En & Anor. v. Public Prosecutor* (1948) M.L.J. 196.

(2) *Rex v. Man Woo* (1951) M.L.J. 20; 2 M.L.R. 39.

CRIMINAL REFERENCE.

T. V. A. Brodie (Solicitor General) for the Public Prosecutor.

R. Ramani for the respondent.

Cur. Adv. Vult.

Judgment of the Court of Appeal was delivered by :—

Foster-Sutton, C.J. : — This is a Reference to the Court of Appeal by the Public Prosecutor, under section 34 of the Courts Ordinance, 1948, by which we are asked to determine :—

"Whether a Chandu Officer, who is not a member of the police force of the Federation, is a Police Officer within the meaning of section 26 of the Evidence Ordinance, 1950."

On behalf of the Public Prosecutor, the Solicitor General submitted that —

"the natural and ordinary meaning of police officer is not and does not include a person who is charged only with enforcing one Ordinance, that a police officer is a person charged with the duty of general law enforcement",

and that such powers as a Chandu Officer has are confined solely to those conferred upon him by the Opium and Chandu Proclamation. He invited us not to follow the decision in the case of *Tan Shu En and Another v. Public Prosecutor*(1), which was an appeal from a conviction by the District Judge, Penang, for possession of opium, reserved for hearing before a Court of three Judges under the provisions of section 306(3) of the Straits Settlements Criminal Procedure Code. In that case the Court held, *inter alia,* that a Chandu Officer under the Opium and Chandu Proclamation is a police officer for the purposes of sections 25 and 26 of the Evidence Ordinance.

The Solicitor General submitted that the decision of Murray-Aynsley C.J. (Singapore) in the case of *Rex v. Man Woo*(2), which was decided in a contrary sense to that of the former case, was the better view,

and he invited us to decide the question asked by this Reference accordingly.

Mr. Ramani, on behalf of the respondent, submitted, *inter alia,* that it was not open to the appellant to impeach the correctness of the decision in *Tan Shu En and Another v. Public Prosecutor,* and that "to give the natural and ordinary meaning to the words 'police officer' would create absurdities".

The judgment in *Tan Shu En and Another v. Public Prosecutor* is not the decision of a Court of co-ordinate jurisdiction with the Court of Appeal, and although the Court of Appeal would always give great weight to such a decision, it is not binding upon it. We prefer the reasoning in the case of *Rex v. Man Woo.*

In our view, the words 'police officer' in section 26 of the Evidence Ordinance must be given their ordinary every-day meaning. Applying that test, a Chandu Officer is not, in our opinion, a police officer within the meaning of the section.

It was also argued on behalf of the appellant that a Chandu Officer is expressly excluded from the scope of section 26 of the Evidence Ordinance by reason of the definition of 'police officer' in section 2 of the Interpretation and General Clauses Ordinance, 1948, which reads as follows :—

" 'police officer' means any member of the police force of the Federation;".

Our decision on the first submission was reached independently of the question as to whether or not the definition of 'police officer' in the Interpretation and General Clauses Ordinance excludes a Chandu Officer from the scope of that section, but we are of the opinion that it does.

At the commencement of his argument before us, the Solicitor General indicated that the Public Prosecutor did "not wish to press hardly on the respondent", and that the sole purpose of this Reference was to obtain a decision on a point of law which it was considered to be in the public interest to have determined by this Court. That being so, we make no order on this Reference, and the order made by Wilson, J. will, therefore, stand.*

Order accordingly.

In re ZAINAB BINTE MAT DIAH, Decd.

[App. Civ. Juris. (Briggs, J.) June 21, 1951]

[Kota Bharu — Civil Appeal No. 1 of 1951]

Letters of Administration — Grant of — Two Estates in one Proceedings — No proper representation — Distribution order.

To wind up two estates in the proceedings on a single petition is wholly improper and must never be done. Any arguments from supposed economy or convenience must be disregarded. The rule that each estate must be dealt with separately is without exception.

APPEAL from the decision of the Assistant Registrar.

The facts appear sufficiently from the judgment.

Cur. Adv. Vult.

Briggs, J.: —This matter came before me on appeal from the Assistant Registrar, Kota Bharu, and raises certain points which I think require to be understood more clearly than they are at present. I accordingly direct that, although this judgment is given in Chambers, it is to be communicated to all District Officers and Assistant District Officers in the State, and that it may be reported if desired.

Zainab binti mat Diah died some eight years ago leaving as her *waris,* in accordance with Mohammedan law, two sons, Taib and Hassan. After the death of Zainab and before the petition was filed, Hassan died leaving as his *waris,* in accordance with Mohammedan law, four minor children, three sons and one daughter, and a widow, Minah. There has been no application for representation of the estate of Hassan. Taib petitioned for Letters of Administration of the estate of Zainab and Minah was cited in order that she might represent the estate of Hassan. On the hearing of the petition, the parties requested the Assistant Registrar to make an immediate distribution order, and he did so. The order purports to have been made by consent, but in the case of appeals from a Registrar to the Judge in Chambers this does not bar appeal, since the Registrar is notionally exercising the Judge's discretion, and the matter, if it comes before the Judge, does so as *res integra.* I think the only exception to this rule is where the Registrar is acting as taxing master. I am of opinion that the Order of the Assistant Registrar was wrong for the following reasons.

Minah cannot, in the present state of affairs, represent the estate of Hassan : nor can anyone else. Neither Minah nor her children are beneficiaries of the estate of Zainab, except in the loose sense that they may ultimately, through the estate of Hassan, receive some of its assets. There was, accordingly, no person who could properly appear as a respondent on the petition, although there was an interested "party". It is not necessary in these circumstances, I think, to complicate proceedings by appointing an administrator *ad litem* to the estate of Hassan; but in the absence of a proper representative of his estate it is quite impossible to make any distribution order, and the only proper order would be to make a grant of Letters

* The judgment of Wilson, J. is reported in (1951) M.L.J. at p. 111.